Chapter 5: Notice & Time Requirements

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This chapter discusses the requirements for serving summonses and notices of hearings in child protective proceedings. It also contains a table describing time requirements in those proceedings. The chapter begins with a summary of the statutory and court rule requirements for serving process on respondents and other persons who may have custody of a child involved in the proceedings. The statutory requirements for service in termination of parental rights proceedings are particularly important because a failure to meet those requirements renders the proceedings void. The chapter then discusses establishing a child's paternity, a necessary prerequisite to a putative father's rights to notice and participation in the proceedings. The detailed requirements for serving summonses, notifying persons of hearings, and waiving service defects are also set forth.

For notice requirements under the Indian Child Welfare Act, see Chapter 20.

5.1 Service of Process in Child Protective Proceedings

Statutory requirements. Failure to personally serve a parent with a summons as required by statute prior to termination of that parent's parental

rights is a jurisdictional defect that renders the proceedings void with regard to that parent. *In re Atkins,* 237 Mich App 249, 250–51 (1999), and *In re Gillespie,* 197 Mich App 440, 442 (1992). The applicable statute, MCL 712A.12, states in part as follows:

> "After a petition shall have been filed . . . , the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated. . . . If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.
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> "Any interested party who shall voluntarily appear in said proceedings, may, by writing, waive service of process or notice of hearing."

MCL 712A.13 also contains requirements regarding service of process:

> "Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least one week before the time fixed in the summons or notice for the hearing.
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> "Service of summons, notices or orders required by this chapter may be made by any peace officer or by any other suitable person designated by the judge. The judge may, in his discretion, authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the time of

> hearing of any case coming within the provisions of this chapter, and such expenses and the expenses of making service as above provided, when approved by the judge, shall be paid by the county treasurer from the general fund of the county.
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> "If any person so summoned, as herein provided, shall fail without reasonable cause to appear before said court, he may be proceeded against for contempt of court and punished accordingly."

In *In re Brown,* 149 Mich App 529 (1986), the respondent was not served with a summons, the petitions, or notices of hearings prior to the termination of her parental rights. The Court of Appeals reversed, holding that the requirements of MCL 712A.12 and 712A.13 are jurisdictional: if these requirements are not met, the proceedings with regard to the parent in question are void. *Brown, supra* at 541. The Court of Appeals distinguished statutory notice requirements, which are jurisdictional, from the notice requirements in the juvenile court rules, which are not jurisdictional. Thus, although respondent's attorney received a copy of the amended petition requesting termination of parental rights, respondent appeared at the termination hearing, and respondent was read the allegations and her rights on the record, reversal was required because the purpose of a summons and the petition is to apprize respondents of their rights and the charges to allow them sufficient time to prepare a defense. Receipt by a respondent's attorney of the petition is insufficient. *Id.* at 541–42.

Compare *In re Andeson,* 155 Mich App 615, 618–19 (1986) (proceedings were not void, where a parent was properly served with a summons prior to the adjudicative hearing, the hearing was adjourned, and the parent was later mailed a notice of hearing but failed to appear).

A noncustodial parent must be personally served with notice of a hearing and a copy of the petition. MCL 712A.12 and *In re Miller,* 182 Mich App 70, 73 (1990). See "Absent Parent Protocol: Identifying, Locating, and Notifying Noncustodial Parents in Child Protective Proceedings," attached as an appendix to this chapter.

A respondent may not allege that defective service of process on another party to the proceedings rendered those proceedings void. *In re Terry,* 240 Mich App 14, 21 (2000), and *In re EP,* 234 Mich App 582, 598 (1999), overruled on other grounds 462 Mich 341 (2000).

Requirements for valid orders directed to a parent or other person. An order directed to a parent or other person shall not be binding unless the parent or other person has been given an opportunity for a hearing pursuant to the issuance and service of a summons or notice as provided in sections 12 and 13 of the Juvenile Code. MCL 712A.18(4).

> **Note:** This rule is significant for purposes of collecting reimbursement of the costs of care and service (see Sections 14.2–14.3), and for other orders affecting adults pursuant to MCL 712A.6 and MCL 712A.6b (see Section 4.17).

Court rule requirements. The court rule requirements governing service of process are more detailed than the statutory requirements. MCR 3.920(A)(1)–(2) state as follows:

> **"(A) General.**
>
> "(1) Unless a party must be summoned as provided in subrule (B), a party shall be given notice of a juvenile proceeding in any manner authorized by the rules in this subchapter.
>
> "(2) MCR 2.004 applies in juvenile proceedings involving incarcerated parties."*

*See Section 5.7, below.

A summons may be issued and served on a party before any proceeding. MCR 3.920(B)(1). The parties in a child protective proceeding are the petitioner, child, respondent, and a parent, guardian, or legal custodian. MCR 3.903(A)(18)(b). MCR 3.920(B)(2)(b) sets forth the circumstances *requiring* the issuance of a summons in child protective proceedings. That rule states:

> "(2) *When Required.* Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:
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> * * *
>
> (b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C)."*

*See Section 5.4, below.

MCR 3.920(F) deals with service of summonses and notices of hearings following a party's first appearance before the court. More importantly, it requires that a summons be served on a respondent before trial and a respondent-parent before a termination hearing. That rule states:

> "(F) *Subsequent Notices.* After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (C), *except that a summons must be served for*

trial or termination hearing as provided in subrule (B)." (Emphasis added.)

Where a dispositional order has been entered placing a child in the temporary custody of the court, the court may not proceed to a hearing on termination of parental rights without issuing and serving a fresh summons. MCL 712A.20 and *In re Atkins,* 237 Mich App 249, 251 (1999). In *Atkins,* the children were initially placed in the temporary custody of the court. At the adjudicatory hearing, respondent signed an "advice of rights" form, which included a provision waiving notice of hearing and service of process for future hearings. Respondent was not personally served with an amended petition requesting permanent custody of the children. *Id.* The Court of Appeals first noted that where a child is initially placed in the temporary custody of the court, MCL 712A.20 requires proper issuance and service of a fresh summons before a hearing on termination of parental rights may be held. Receipt by respondent's attorney of the amended petition was insufficient. The Court rejected the argument that MCR 5.920(F)* excused service of a fresh summons in such cases, limiting application of that court rule to cases where the respondent has been properly served with a summons for the permanent custody hearing and the hearing is adjourned. *Atkins, supra.*

*MCR 5.920 has been amended in response to the holding in the *Atkins* case. See current MCR 3.920(F), quoted above.

The Court of Appeals also held that respondent's waiver of the right to service of process and notice of hearing did not apply to the permanent custody hearing. Although the requirements of former MCR 5.920(E) were met, at the time of the waiver, only a temporary custody petition had been filed. *Atkins, supra* at 251-52.*

*See Section 5.8, below, for the requirements for a valid waiver.

Definitions of "respondent," "parent," "guardian," "legal custodian," and "nonparent adult." "Except as provided in MCR 3.977(B), 'respondent' means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child." MCR 3.903(C)(10). The definitions of "parent," "guardian," "legal custodian," and "nonparent adult" are contained in the court rules. Those terms are defined as follows:

- "'Parent' means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor." MCR 3.903(A)(17).
- "'Guardian' means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202." MCR 3.903(A)(11).
- "'Legal Custodian' means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state." MCR 3.903(A)(13).

- "'Nonparent adult' means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

  (a) has substantial and regular contact with the child,

  (b) has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare, and

  (c) is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree." MCR 3.903(C)(6).

MCR 3.977(B) limits the definition of "respondent" for purposes of hearings to terminate parental rights to persons with parental rights. MCR 3.977(B) states as follows:

> "(B) *Definition.* When used in this rule, unless the context otherwise indicates, "respondent" includes:
>
> (1) the natural or adoptive mother of the child;
>
> (2) the father of the child as defined by MCR 3.903(A)(7).
>
> "'Respondent' does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child."

Definition of "father." MCR 3.903(A) defines "father" as follows:

> "(7) 'Father' means:
>
> (a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
>
> (b) A man who legally adopts the minor;
>
> (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;

> (d) A man judicially determined to have parental rights; or
>
> (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 et seq., or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar."

When determining whether a child was conceived during wedlock, expert testimony is not required: a judge may view the evidence in light of his or her own experience and knowledge. *Hinterman v Stine,* 55 Mich App 282, 285–86 (1974).

Presumption of legitimacy. The Michigan Supreme Court has held that when a child is conceived or born during a marriage, a "strong, though rebuttable, presumption of legitimacy" arises. *Serafin v Serafin,* 401 Mich 629, 634–36 (1977). *Serafin* also held that this presumption must be rebutted by clear and convincing evidence. *Id.* at 636. The Court has applied this presumption to child protective proceedings. *In re CAW,* 469 Mich 192, 199–200 (2003).* In child protective proceedings, the presumption of legitimacy is contained in MCR 3.903(A)(7)(a), which states that a man married to a child's mother at any time from the child's conception to the child's birth is that child's father, "unless a court *has determined,* after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage." (Emphasis added.)

*See Section 5.2, below, for further discussion of *CAW.*

To rebut the presumption of legitimacy and establish that a child is not the issue of a marriage, a court must determine that the child was "born out of wedlock." The Paternity Act, MCL 722.711 et seq., and the Adoption Code, MCL 710.21 et seq., contain definitions of "child born out of wedlock" that are similar to the operative language in MCR 3.903(A)(7)(a)'s definition of "father." The Paternity Act defines a "child born out of wedlock" as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court *has determined* to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a) (emphasis added). The Adoption Code defines a child "born out of wedlock" as "a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court *has determined* to be a child born during a marriage but not the issue of that marriage." MCL 710.22(h) (emphasis added).

MCR 3.903(A)(7)(e) includes in its definition of "father" a man who has joined in a proper acknowledgement of paternity under the Acknowledgment of Parentage Act, MCL 722.1001 et seq. That act does not define a child "born out of wedlock." However, the definition of "child" is similar to the definitions provided in the Paternity Act and the Adoption Code for a child "born out of wedlock." The Acknowledgment of Parentage Act defines a "child" as "a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, or a child that the circuit court *determines* was born or conceived during a marriage but is not the issue of that marriage." MCL 722.1002(a) (emphasis added).

Case law interpreting the Paternity and Acknowledgement of Parentage acts has required that the determination that a child was "born out of wedlock" occur prior to an action to determine custody, support, and parenting time. In *Girard v Wagenmaker,* 437 Mich 231, 242–43 (1991), the Michigan Supreme Court held that for a putative father to have standing under the Paternity Act, a circuit court must have made a determination that the child was "born out of wedlock" at the time the paternity complaint is filed. The Court relied upon the Legislature's use of the present perfect tense verb phrase "has determined" in reaching its conclusion. See also *Dep't of Social Services v Baayoun,* 204 Mich App 170, 176 (1994) (DSS [now Department of Human Services] does not have standing under the Paternity Act unless a prior court determination has been made that a child was "born out of wedlock"), and *Aichele v Hodge,* 259 Mich App 146, 152–56 (2003) (under the Acknowledgement of Parentage Act, there must be a court determination that a child is "born out of wedlock" before the mother and biological father may file an affidavit of parentage). But see *Id.* at 172 (Cooper, PJ, dissenting) (because the Acknowledgement of Parentage Act uses the present tense verb "determines" when describing when a finding must be made that a child was "born out of wedlock," cases under that act should not fall under the rule in *Girard, supra*).

A divorce judgment or amended divorce judgment may constitute a prior court determination that a child was not the issue of a marriage. *Afshar v Zamarron,* 209 Mich App 86, 92 (1995), and *Opland v Kiesgan,* 234 Mich App 352, 358–59 (1999).

5.2 Establishing Paternity

Procedure for establishing paternity in a child protective proceeding. MCR 3.921(C) contains the procedures for notifying a "putative father" and determining whether the "putative father" is entitled to any rights regarding the child. "'Putative father' means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7)." MCR 3.903(A)(23). MCR 3.921(C) states as follows:

> "(C) *Putative Fathers.* If, at any time during the pendency of a proceeding, the court determines that the minor has no

father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

"(1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice must include the following information:

> (a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;
>
> (b) that a petition has been filed with the court;
>
> (c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
>
> (d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

"(2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine, as appropriate, that:

> (a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.
>
> (b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
>
> (c) there is probable cause to believe that another identifiable person is the natural father of the minor.

> If so, the court shall proceed with respect to the other person in accord with subrule (C).
>
> (d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.
>
> "(3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if
>
> (a) he fails to appear after proper notice, or
>
> (b) he appears, but fails to establish paternity within the time set by the court."

Note: SCAO Form JC 04 (petition) allows for identification of the father as a putative father. The best practice is to begin steps to identify the biological father as early in the proceedings as possible. See "Absent Parent Protocol: Identifying, Locating, and Notifying Noncustodial Parents in Child Protective Proceedings," attached as an appendix to this chapter.

The Michigan Supreme Court has held that the Michigan Court Rules do not permit a biological father to participate in a child protective proceeding where a legal father exists. *In re KH,* 469 Mich 621, 636 (2004), overruling *In re Montgomery*, 185 Mich App 341 (1990). In *KH*, the DHS filed a petition to terminate the parental rights of Tina and Richard Jefferson to four children. During a bench trial, the parties testified that Tina and Richard were legally married during each child's conception and birth and were still married at the time of trial. Based on DNA test results admitted at trial, the referee determined that another man, Lagrone, was the biological father of three of the children. Lagrone then filed a motion seeking a ruling that Richard Jefferson was not the father of the three children. Tina Jefferson objected to the motion, arguing that as a putative father Lagrone did not have standing to establish paternity in a child protective proceeding. The trial court granted Lagrone's motion to establish paternity. The children's lawyer-guardian ad litem appealed. *KH, supra* at 625–27.

MCR 5.921(D)* permitted a putative father to be identified and given notice of court hearings only where the minor child had no father. Therefore, if a father already existed pursuant to MCR 5.903(A)(4), a putative father could not be identified or given notice. *KH, supra* at 630.

*Now MCR 3.921(C). Although *KH* was decided under the court rules in effect prior to May 1, 2003, the Court notes that the analysis and outcome of the case are the same under the current court rules. *KH, supra* at 624, n 1.

Because Tina and Richard were legally married at the time of each minor's conception and birth, the children had a legal father and no other man could be identified as a putative father unless the minors were determined to be "born out of wedlock." MCR 5.903(A)(1)* defined a "child born out of wedlock" as a child "conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage."

*The definition of "child born out of wedlock" was incorporated into the definition of "father" in MCR 3.903(A)(7)(a).

Lagrone argued that the three children were judicially determined to be "born out of wedlock" when the referee determined that Lagrone was the biological father of the children. The Court looked to the Paternity Act as the legislatively provided mechanism for establishing paternity. The Court concluded:

> "[A] determination that a child is born out of wedlock must be made by the court before a biological father may be identified in a child protective proceeding.
>
> "Under either version of the court rule, MCR 5.921(D) or MCR 3.921(C), a prior out-of-wedlock determination does not confer *any type* of standing on a putative father. Rather, the rules give the trial court the discretion to provide notice to a putative father, and permit him to establish that he is the biological father by a preponderance of the evidence. Once proved, the biological father is provided fourteen days to establish a legally recognized paternal relationship.
>
> "*Nothing in the prior or amended court rules permits a paternity determination to be made in the midst of a child protective proceeding.* Rather, once a putative father is identified in accordance with the court rules, the impetus is clearly placed on the putative father to secure his legal relationship with the child as provided by law. If the legal

> relationship is not established, a biological father may not be named as a respondent on a termination petition, the genetic relationship notwithstanding." [Emphasis added.] *KH, supra* at 633–34.

In *KH*, the record contained evidence that the presumption of legitimacy had been rebutted. During the course of the proceedings, Tina and Richard Jefferson testified that Richard was not the children's father. Richard also testified that he did not wish to participate in the proceedings, which, the Court concluded, could reasonably be construed as an indication that Richard was prepared to renounce the benefit afforded to him by the presumption of legitimacy and to not claim the children as his own. *KH, supra* at 636–37. However, since the trial court did not make a finding on whether the presumption of legitimacy was rebutted, the Court remanded to the trial court for such a determination. The Court concluded:

> "If Mr. Lagrone had been . . . identified[as a putative father], and elected to establish paternity as permitted by MCR 5.921(D)(2)(b), the out-of-wedlock determination made in the child protective proceeding could serve as the prior determination needed to pursue a claim under the Paternity Act. *Girard* [*v Wagenmaker*, 437 Mich 231 (1991)].
>
> "Accordingly, this case is remanded to the trial court for such a determination. If the court finds that the presumption of legitimacy was rebutted by clear and convincing evidence from either parent that the children are not the issue of the marriage, the court may take further action in accordance with MCR 5.921(D)." *KH, supra* at 637.

In *In re CAW,* 469 Mich 192 (2003), the Michigan Supreme Court reversed the Court of Appeals' decision that a putative father has standing to intervene in a child protective proceeding under the Juvenile Code where the child involved has a legal father. *In re CAW* involved a married couple, Deborah Weber and Robert Rivard, and their children. In July 1998, a petition alleging abuse and neglect was filed pursuant to MCL 712A.2(b). The petition stated that Rivard was the legal father of the children but might not be the biological father of "any or all of the children." The petition also indicated that Larry Heier was the biological father of one of Weber and Rivard's children, CAW. The trial court published a notice of hearing to Heier, but he did not attend any hearings. Later Rivard and Weber indicated that Rivard was the father of all of the children. The trial court then deleted all references to Heier contained in the petition. In November 2000, Weber and Rivard's parental rights to CAW were terminated. Heier then filed a motion in the trial court seeking to intervene in the child protective proceedings. Heier alleged that he was the biological father and had

standing on that basis. The lower court denied Heier's motion. *CAW, supra* at 195–96. The Court of Appeals reversed.

The Supreme Court held that Heier did not have standing to intervene in the child protective proceedings. *Id.* at 199. The Court indicated that intervention in such a proceeding is controlled by MCR 5.921(D),* which provided, in part, that a putative father is entitled to participate only "[i]f, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 5.903(A)(4). . . ." MCR 5.903(A)(4) defined a "father" as "a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock . . . ." MCR 5.903(A)(1) defined a "child born out of wedlock" as a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of the marriage. Because Weber and Rivard were married during the gestation period, CAW was not "born out of wedlock." No finding had ever been made that CAW was not the issue of the marriage, and the termination of Rivard's parental rights was not a determination that CAW was not the issue of the marriage. Therefore, the requirements of MCR 5.903 were not met, and Heier did not have standing. The Court also stated the following regarding the policy underlying the applicable rules:

*MCR 5.921 was amended effective May 1, 2003. See MCR 3.921(C), quoted above.

> "Finally, in the Court of Appeals opinion, as well as the dissent, there is much angst about the perceived unfairness of not allowing Heier the opportunity to establish paternity. We are more comfortable with the law as currently written. There is much that benefits society and, in particular, the children of our state, by a legal regime that presumes the legitimacy of children born during a marriage. See *Serafin v Serafin*, 401 Mich 629, 636; 258 NW2d 461 (1977). It is likely that these values, rather than failure to consider the plight of putative fathers who wish to invade marriages to assert paternity claims, motivated the drafters of the rules and statutes under consideration." *CAW, supra* at 199–200.

Putative fathers must establish paternity before being entitled to notice of proceedings. In *In re Gillespie,* 197 Mich App 440, 444–46 (1992), a putative father, who was in prison during the course of the proceedings, was not personally served with a summons and a copy of the petition prior to the termination hearing. He was served only with a notice of hearing by ordinary mail prior to the adjudicative hearing. After two review hearings at which respondent was represented by counsel, termination was requested, and service was attempted by publication because the putative father's whereabouts were unknown. The trial court determined that the putative father was the child's natural father and terminated his parental rights on grounds of abandonment and failure to provide proper care or custody. The Court of Appeals found that the procedure used in this case failed to establish jurisdiction over the putative father, but that reversal was not required because the putative father had failed

to establish that he was the child's natural father as required by former MCR 5.903 and 5.921.

Federal constitutional rights of unwed fathers who have established relationship with child. If an unwed father's paternity has been established or is uncontested and he has a "substantial" relationship with his child, he has a right to notice and a hearing on his fitness as a parent. In *Lehr v Robertson,* 463 US 248, 261–62 (1983), and *Caban v Mohammed,* 441 US 380, 392 (1979), the United States Supreme Court concluded that an unmarried biological father who has established a "substantial" relationship with his child has a protected liberty interest. See also *Michael H v Gerald D,* 491 US 110, 142–43 (1989) (Brennan, J, dissenting). A "substantial parent-child relationship" exists "when an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'coming forward to participate in the rearing of his child.'" *Id.*, 491 US at 143 (citations omitted). See also MCL 710.39(1)–(2), which provide that under the Adoption Code, a putative father who has "established a custodial relationship" with the child or "provided substantial and regular support or care" to the mother or child may only have his rights terminated pursuant to a step-parent adoption or the Juvenile Code, and *In re Barlow,* 404 Mich 216, 229 (1978).

In *Stanley v Illinois,* 405 US 645 (1972), Joan and Peter Stanley were the parents to three children. They lived together intermittently for 18 years but never married. When Joan Stanley died, the state of Illinois removed the three children from Peter Stanley's care without a hearing. Illinois law provided that the children of unwed fathers would become wards of the State upon their mother's death. The law presumed that unwed fathers were unfit parents. Illinois law contained no such presumption for unwed mothers. Stanley appealed the court's decision to remove the children and place them with guardians. Stanley claimed that his due process rights were violated because he was entitled to a hearing on his fitness as a parent before his children were removed from his care. Stanley also claimed that he was denied equal protection of the law because all parents, except unwed fathers, are afforded a hearing before the custody of their children can be challenged.

The United States Supreme Court held:

> "We conclude that, as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." 405 US at 649.

The Court indicated that the integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment, the Equal Protection

Clause of the 14th Amendment, and the Ninth Amendment in cases such as *Meyer v Nebraska*, 262 US 390 (1923), *Skinner v Oklahoma*, 316 US 535 (1942), and *Griswold v Connecticut*, 381 US 479 (1965). 405 US at 651. The Court found that the state of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. The court recognized a father's "cognizable and substantial" interest in the "companionship, care, custody, and management" of his children. 405 US at 651-52. The court also recognized the State's interest in caring for children, but indicated that that interest is "*de minimis*" if the father is a fit parent. 405 US at 657-58. Accordingly, the Court reversed the lower court's decision and remanded for further proceedings.

Putative fathers have no protected liberty interest under the state constitution. In *In re CAW (On Remand),* 259 Mich App 181 (2003), the Court of Appeals held that denying a putative father standing to intervene in a child protective proceeding does not violate due process guarantees. The Court of Appeals relied on previous cases dealing with due process rights under the *Michigan* Constitution. In *Hauser v Reilly,* 212 Mich App 184 (1995), the Court of Appeals found in Michigan's constitution a protected liberty interest. The Court in *Hauser, supra* at 188, stated:

> "We agree with the reasoning of Justice Brennan in *Michael H.* Following that analysis, if plaintiff in this case had an established relationship with his child, we would hold that he had a protected liberty interest in that relationship that entitled him to due process of law. However, because plaintiff has no such relationship, we hold that the Paternity Act did not deny him his right to due process."

However, in *McHone v Sosnowski,* 239 Mich App 674, 679–80 (2000), the Court of Appeals concluded that its statement in *Hauser* was dicta and refused to follow it. In *CAW (On Remand), supra* at 185, the Court of Appeals concluded that even if it followed *Hauser,* the putative father in *CAW* had no protected liberty interest because he failed to establish a substantial relationship with the child.

Notice requirements under the Safe Delivery of Newborns Law. After a newborn child is surrendered to an emergency service provider or hospital, the child may be placed in the protective custody of a child placing agency. If the agency has complied with MCL 712.7(f), then the notice under that section is the notice to the newborn's parents* required by MCL 712A.19b. MCL 712.7(f) requires the agency to make reasonable efforts to identify and locate a parent who did not surrender the newborn, and if the identity or address of the parent is unknown, the agency must publish notice in a newspaper in the county where the newborn was surrendered. A parent who surrenders a newborn and does not file a petition for custody under MCL 712.10 is presumed to have knowingly released his or her parental rights to the newborn. MCL 712.17(1).

*"Parent" is not defined in the Safe Delivery of Newborns Law.

If a petition for custody is not filed under MCL 712.10, then the child placing agency shall petition the court for termination of parental rights under MCL 712A.19b. Termination of parental rights may then be ordered pursuant to MCL 712A.19b(3)(a)(*iii*).

Placement of child with putative father's parent. Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to allow a court to place a child with a putative father's parent prior to disposition.* MCL 712A.13a(1)(j) states, in part:

> "A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father. . . ."

*The court may also order such a placement as a disposition. See Section 13.9(B).

5.3 Issuance and Service of Summons

A. Contents of Summons

MCR 3.920(B)(3)(a)–(d) specify the required content of a summons.* That rule states as follows:

> "The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:
>
> (a) identify the nature of the hearing;
>
> (b) explain the right to an attorney and the right to a trial by a judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;
>
> (c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and
>
> (d) have a copy of the petition attached."

*See SCAO Form JC 21, which contains the required notices.

B. Manner of Service of Summons

The petitioner is "charged with providing that service of process is accomplished in accordance with the court rules." *In re Adair,* 191 Mich

App 710, 715 (1991). See also MCL 712A.13 (judge may designate peace officer or suitable person to serve summons, notice, or court orders).

MCR 3.920(B)(4)(a)–(d) discuss the manner of service:

> **"(4) Manner of Serving Summons.**
>
> "(a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.
>
> "(b) If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.
>
> "(c) If personal service of a summons is not required, the court may direct that it be served in a manner reasonably calculated to provide notice."

MCL 712A.13 also contains directives regarding the manner of service:

> "Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct."

In *In re Mayfield,* 198 Mich App 226, 232–33 (1993), the Court of Appeals first noted that violations of the statutory notice provisions constitute jurisdictional defects, while violation of court rule requirements do not, as the jurisdiction of the "juvenile court" may be established by reference to statute and may not be expanded by court rule. Noncustodial parents must receive proper notice. MCL 712A.13 provides for alternative methods of service sufficient to confer jurisdiction in child protective proceedings. The record in *Mayfield* established that the trial court mailed notice of the adjudicative hearing and a copy of the petition, and notice of the dispositional hearing, to the putative father's last-known address. Although these notices were returned marked "no such address," the Court of Appeals held that the trial court satisfied requirements for substituted service under MCL 712A.13. The court had subject matter jurisdiction of the proceeding and jurisdiction over the respondent-mother (who had been personally served with a summons prior to trial). Therefore, the trial court's orders were not void.

In *In re Zaherniak*, 262 Mich App 560 (2004), the Court of Appeals discussed an apparent conflict between MCR 3.920 and MCL 712A.13. MCR 3.920(B)(4)(b) provides that the court may find "on the basis of testimony or a motion and affidavit" that personal service cannot be made, and the court may then order substitute service. MCL 712A.13 also provides for substitute service; however, MCL 712A.13 does not require the court to make its findings based upon testimony or an affidavit. In *Zaherniak*, the petitioner was unable to personally serve the respondent with notice of the hearing on termination of parental rights. At a hearing in the respondent's absence, the trial court suggested that the petitioner file an affidavit of diligent effort, and the court would order service by publication. The petitioner filed a motion for alternate service without a proper affidavit. The court did not take any testimony regarding the motion before issuing its order for service by publication. After publication, termination proceedings were held and the respondent's parental rights were terminated. The respondent appealed, claiming that the court improperly allowed service by publication and therefore lacked jurisdiction over her. The respondent argued that the petitioner's motion was defective because it failed to specify facts to support an order for substitute service.

The Court of Appeals held that MCL 712A.13, not MCR 3.920, controls the determination of whether a court has established jurisdiction over a respondent:

> "We believe that MCL 712A.13 reflects our Legislature's policy considerations concerning the necessary requirements for obtaining jurisdiction over a parent or guardian of a juvenile. Because the issue of service is a jurisdictional one, the statutory provision governs. The plain language of the statute contains no specific requirements concerning what types of evidence a court must consider in determining whether substitute service is indicated, or the form in which the evidence must be received. By its silence, MCL 712A.13 permits a court to evaluate evidence other than testimony or a motion and affidavit when determining whether notice can be made by substituted service. We believe that the recently amended court rule requirements now found in MCR 3.920(B)(4)(b) are restrictions affecting jurisdiction in matters that are usually time-sensitive and for which the Legislature's policy is to seek prompt resolution for the sake of the juvenile involved, and as such conflict with MCL 712A.13. Therefore, the statute prevails." *Zaherniak, supra* at 568.

The Court of Appeals concluded that the trial court did not err in relying upon the petitioner's motion for alternate service and documents in the court file regarding previous failures to serve the respondent.

In *In re Adair,* 191 Mich App 710 (1991), respondent-mother's whereabouts were unknown, but a caseworker and respondent's attorney believed that she was incarcerated in Virginia or West Virginia. Prior to the court entering adjudicative and dispositional orders, substituted service by registered mail and publication was attempted. The Court of Appeals reversed the trial court's orders, holding that the court erred by ordering notice by publication before determining if DSS had made reasonable efforts to locate her and attempt service by registered mail. Although personal service on respondent was impracticable, it was error to allow publication notice without first making reasonable efforts to locate the respondent. *Id.* at 714. The Court noted that notifying the respondent, in addition to establishing jurisdiction over her, allows for another possible placement for the child involved. The Court added:

> "Although the court rules do not indicate what party has the burden in attempting to locate a parent, we do not believe the responsibility should be any different than that provided in civil matters. The DSS, as the petitioning party, is charged with providing that service of process is accomplished in accordance with the court rules. While others may be required to assist in locating a respondent if they possess special information, the burden should not fall solely on court-appointed counsel, as apparently happened in this case." *Id.* at 714–15.

Motions for substituted service must show that personal service of process can not reasonably be made, and that the substituted method of service is the best method available to provide notice. A motion for substituted service should contain sufficient facts to allow the court to determine what specific efforts were made to serve process and why the substituted method should be used. *Krueger v Williams,* 410 Mich 144, 167–70 (1981).

C. Time Requirements for Service of Summons

MCR 3.920(B)(5)(a)–(c) set forth the following time requirements for serving a summons:

> **"(5) Time of Service.**
>
> "(a) A summons shall be personally served at least:
>
> (*i*) 14 days before hearing on a petition that seeks to terminate parental rights or a permanency planning hearing,
>
> (*ii*) 7 days before trial or a child protective dispositional review hearing, or
>
> (*iii*) 3 days before any other hearing.

> "(b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subrule (a) requires for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required by subrule (a) if the party to be served resides outside Michigan.
>
> "(c) If service is by publication, the published notice must appear in a newspaper in the county where the party resides, if known, and if not, in the county where the action is pending. The published notice need not include the petition itself. The notice must be published at least once 21 days before a hearing specified in subrule (a)(*i*), 14 days before trial or a hearing specified in subrule (a)(*ii*), or 7 days before any other hearing."

Note: Sufficient "lead time" for the publication of notices in newspapers should be considered. Depending upon the county, a newspaper may require as much as two weeks' "lead in" prior to publication.

MCL 712A.13 also contains certain time requirements for service of process, which differ from those contained in the court rule:

> "It shall be *sufficient to confer jurisdiction* if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least one week before the time fixed in the summons or notice for the hearing." (Emphasis added.)

D. Subsequent Notices After a Failure to Appear

When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings except a hearing on the termination of parental rights. MCR 3.921(D).

5.4 Notice of Hearings in Child Protective Proceedings

General requirements. MCR 3.920(C)(1) contains the general requirements for providing notice of hearings in child protective proceedings. That rule states as follows:

"(C) Notice of Hearing.

> "(1) *General.* Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules (C)(2) and (C)(3), or as otherwise provided in the rules."

Preliminary hearings and emergency removal hearings. Notice of a preliminary hearing or an emergency removal hearing must be given to the parent of the child as soon as the hearing is scheduled. MCR 3.920(C)(2)(b) states as follows:

> "(b) When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974(B)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone."

Note: Notice of a preliminary hearing is often given to a respondent custodial parent orally by a Children's Protective Services Worker investigating alleged abuse or neglect of a child. Noncustodial parents may be given notice via telephone if they can be contacted. Notification of a noncustodial parent often occurs before the first hearing after authorization of the petition, not at the preliminary hearing, because the petition, which may contain the name and address of the noncustodial parent, is not available until the start of the preliminary hearing.

Initial disposition hearings and review hearings. MCR 3.973(B), which governs notice of initial disposition hearings, states as follows:

> "(B) *Notice.* Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920."

MCR 3.975(B), which governs notice of dispositional review hearings, requires *written* notice of hearing. That rule states as follows:

> "(B) *Notice*. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR[] 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties."

Permanency planning hearings and hearings on termination of parental rights. MCR 3.920(C)(3) contains the requirements for permanency planning hearings and hearings on termination of parental rights. That rule states as follows:

> **"(3) Permanency Planning Hearing; Termination Proceedings.**
>
> "(a) Notice of a permanency planning hearing must be given in writing at least 14 days before the hearing.
>
> "(b) Notice of a hearing on a petition requesting termination of parental rights in a child protective proceeding must be given in writing at least 14 days before the hearing."

MCR 3.976(C) states:

> "(C) *Notice*. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties."

MCR 3.977(C), governing termination of parental rights, states:

> "(C) *Notice; Priority.*
>
> (1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).
>
> (2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload."

Post-termination of parental rights review hearing. MCR 3.978(B) states as follows:

> "(B) *Notice; Right to be Heard.* The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing."

For children in "permanent foster family agreements" or relative placements intended to be permanent under MCL 712A.19(4), the notice provisions of MCL 712A.19(5) apply.*

*See Section 5.5, below.

Party's failure to appear in response to notice of hearing. MCR 3.920(C)(4) addresses a party's failure to appear in response to a notice of hearing:

> "(4) *Failure to Appear.* When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena."

5.5 Persons Entitled to Notice of Hearings

MCR 3.921(B)(1) lists the persons entitled to notice of hearings in child protective proceedings. That rule also contains exceptions for dispositional review hearings, permanency planning hearings, and hearings on termination of parental rights. MCR 3.921(B)(1) states as follows:

> **"(B) Protective Proceedings.**
>
> "(1) *General.* In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:
>
> (a) the respondent,
>
> (b) the attorney for the respondent,
>
> (c) the lawyer-guardian ad litem for the child,
>
> (d) subject to subrule (C),* the parents, guardian, or legal custodian, if any, other than the respondent,
>
> (e) the petitioner,
>
> (f) a party's guardian ad litem appointed pursuant to these rules, and
>
> (g) any other person the court may direct to be notified."

*MCR 3.921(C) deals with establishing paternity in child protective proceedings. See Section 5.2, above.

Dispositional review hearings and permanency planning hearings. MCR 3.921(B)(2) lists the persons who must be notified of dispositional review hearings and permanency planning hearings:

> "(2) *Dispositional Review Hearings and Permanency Planning Hearings.* Before a dispositional review

hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

> (a) the agency responsible for the care and supervision of the child,
>
> (b) the person or institution having court-ordered custody of the child,
>
> (c) the parents of the child, subject to subrule (C),* and the attorney for the respondent parent, unless parental rights have been terminated,
>
> (d) the guardian or legal custodian of the child, if any,
>
> (e) the guardian ad litem for the child,
>
> (f) the lawyer-guardian ad litem for the child,
>
> (g) the attorneys for each party,
>
> (h) the prosecuting attorney if the prosecuting attorney has appeared in the case,
>
> (i) the child, if 11 years old or older,
>
> (j) any tribal leader, if there is an Indian tribe affiliation, and
>
> (k) any other person the court may direct to be notified."

*MCR 3.921(C) deals with establishing paternity in child protective proceedings. See Section 5.2, above.

MCL 712A.19(5) also contains a list of persons who must be notified of a dispositional review hearing. That statutory provision states:

> "(5) Written notice of a review hearing under [MCL 712A.19](2), (3), or (4) shall be served upon all of the following:
>
> (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
>
> (b) The foster parent or custodian of the child.
>
> (c) If the parental rights to the child have not been terminated, the child's parents.
>
> (d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

(g) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(i) If the child is 11 years of age or older, the child.

(j) Other persons as the court may direct."

MCL 712A.19a(4) contains a list of persons who must be notified of a permanency planning hearing and a time requirement for such notice:

"(4) Not less than 14 days before a permanency planning hearing, written notice of the hearing and a statement of the purposes of the hearing, including a notice that the hearing may result in further proceedings to terminate parental rights, shall be served upon all of the following:

(a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.

(b) The foster parent or custodian of the child.

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child.

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) If tribal affiliation has been determined, the elected leader of the Indian tribe.

(g) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(h) If the child is 11 years of age or older, the child.

(i) Other persons as the court may direct."

Hearings on termination of parental rights. MCR 3.921(B)(3) lists the persons who must be notified of a hearing on termination of parental rights:

> "(3) *Termination of Parental Rights.* Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2) [which lists persons entitled to notice of dispositional review hearings and permanency planning hearings]."

MCL 712A.19b(2) contains a list of persons who must be notified of a hearing on termination of parental rights and the time requirement for providing such notice:

> "(2) Not less than 14 days before a hearing to determine if the parental rights to a child should be terminated, written notice of the hearing shall be served upon all of the following:
>
> (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
>
> (b) The child's foster parent or custodian.
>
> (c) The child's parents.
>
> (d) If the child has a guardian, the child's guardian.
>
> (e) If the child has a guardian ad litem, the child's guardian ad litem.
>
> (f) If tribal affiliation has been determined, the Indian tribe's elected leader.
>
> (g) The child's attorney and each party's attorney.
>
> (h) If the child is 11 years of age or older, the child.
>
> (i) The prosecutor."

When child is in "permanent foster family agreement" or permanent relative placement. For children in "permanent foster family agreements" or relative placements intended to be permanent under MCL 712A.19(4), the notice provisions of MCL 712A.19(5) apply.

Post-termination of parental rights review hearing. "The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing." MCR 3.978(B).

5.6 Special Notice Provisions for Physicians

If the child has been placed outside his or her home and the DHS is required to review the case with the child's physician pursuant to MCL 712A.18f(6), then in any judicial proceeding to determine whether the child will be returned home the court must allow the physician to testify regarding the Case Service Plan.* The court must notify the physician of the time and place of the hearing. MCL 712A.18f(7). This requirement is applicable to hearings to review the child's initial placement, dispositional hearings, dispositional review hearings, and permanency planning hearings.

*See Section 13.6 for a detailed discussion of these requirements.

The DHS must review a child's case with the child's attending or primary care physician if the child has been diagnosed with:

> "(a) Failure to thrive.
>
> "(b) Munchausen syndrome by proxy.
>
> "(c) Shaken baby syndrome.
>
> "(d) A bone fracture that is diagnosed as being the result of abuse or neglect.
>
> "(e) Drug exposure." MCL 712A.18f(6)(a)–(e).

5.7 Special Notice Provisions for Incarcerated Parties

In addition to the procedures for notification of noncustodial parents, special procedures must be followed when one of the parties to a child protective proceeding is incarcerated. Effective January 1, 2003, MCR 2.004 requires specific actions be undertaken in cases involving incarcerated parties.

Applicability. MCR 2.004 applies to:

> "(1) domestic relations actions involving minor children, and
>
> "(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights, in which a party is

> incarcerated under the jurisdiction of the Department of Corrections." MCR 2.004(A)(1)–(2).

MCR 2.004(A) states that it applies to one of the specifically enumerated actions "in which a party is incarcerated under the jurisdiction of the Department of Corrections." In *In re Davis*, 264 Mich App 66, 71 (2004), the Court indicated that "Department of Corrections" refers only to the Michigan Department of Corrections. Therefore, MCR 2.004 does not apply to parties incarcerated in another state who are not subject to the jurisdiction of the Michigan Department of Corrections.

Responsibility of the party seeking an order. Under MCR 2.004(B), a party seeking an order regarding a minor child must do the following:

> "(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;
>
> "(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and
>
> "(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule." MCR 2.004(B)(1)–(3).

Responsibility of the court. Once a party has completed the foregoing requirements to the court's satisfaction, MCR 2.004(C) requires the court to:

> "issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides."

The purpose of this telephone call is to determine the following:

> "(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

> "(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,
>
> "(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,
>
> "(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and
>
> "(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate." MCR 2.004(E)(1)–(5).

Documentation and correspondence to incarcerated party. MCR 2.004(D) requires all court documents or correspondence mailed to the incarcerated party to include the name and prison number of the incarcerated party on the envelope.

Denial of relief and sanctions. MCR 2.004(F)–(G) state:

> "(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child."
>
> "(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts."

A parent's due process right to be present at a hearing. If a respondent-parent is incarcerated, the three-part balancing test set forth in *Mathews v Eldridge,* 424 US 319, 335 (1976), should be applied to determine whether due process requires the parent's presence at a hearing to terminate parental rights. *In re Vasquez,* 199 Mich App 44, 46–50 (1993), and *In re Render,* 145 Mich App 344, 348–50 (1985).

Thus, the court must balance the parent's compelling interest in her or his parental rights, the incremental risk of an erroneous deprivation of that interest if the parent is not present at the hearing, and the government's

interest in avoiding the burden of securing the parent's presence at the hearing. Compare *Render, supra* (due process required presence of parent incarcerated in county jail, where parent's attorney had learned of parent's incarceration the day of the trial) and *Vasquez, supra* (due process did not require presence of parent in prison in Texas, where parent was well represented by counsel at the hearing).

5.8 Waiver of Defects in Service of Process or Notice of Hearing

MCR 3.920(G) provides for waiver of defects in service of a summons or notice of hearing. That rule states as follows:

> "(G) *Notice Defects.* The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney."

If a party appears without having been properly served, that party may waive notice of hearing or service of process. See, generally, *In re Slis,* 144 Mich App 678, 683–84 (1985).

A waiver may also be obtained when service of process was untimely. MCR 3.920(E) states as follows:

> "(E) *Waiver of Notice and Service.* A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subrule (B), the party must be provided the advice required by subrule (B)(3)."

MCR 3.920(B)(3) requires that a summons must:

> "(a) identify the nature of the hearing;
>
> "(b) explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;
>
> "(c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and
>
> "(d) have a copy of the petition attached."

Where only a petition requesting temporary custody of a child has been filed, a respondent-parent's waiver of service of process and notice of hearing is not effective to waive the parent's rights to service of a petition for permanent custody of the child. *In re Atkins,* 237 Mich App 249, 252 (1999).

> **Note:** Obtaining a written waiver of notice of hearing at the conclusion of a hearing during the dispositional phase of proceedings (except where proceedings to terminate parental rights will be initiated) may be expedient. Respondents often move during the dispositional phase of child protective proceedings, and obtaining a written waiver of notice prior to the hearing date eliminates later problems associated with locating those respondents who have moved in the interim.

5.9 Subpoenas

MCR 3.920(D)(1)–(3) state that:

> "(1) The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired.
>
> "(2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.
>
> "(3) Except as otherwise stated in this subrule, service of a subpoena is governed by MCR 2.506."

5.10 Proof of Service

MCR 3.920(H) contains the requirements for proof of service. That rule states as follows:

> **"(H) Proof of Service.**
>
> "(1) *Summons.* Proof of service of a summons must be made in the manner provided in MCR 2.104(A).
>
> "(2) *Other Papers.* Proof of service of other papers permitted or required to be served under these rules must be made in the manner provided in MCR 2.107(D).
>
> "(3) *Publication.* If the manner of service used involves publication, proof of service must be

made in the manner provided in MCR 2.106(G)(1), and (G)(3) if the publication is accompanied by a mailing.

"(4) *Content.* The proof of service must identify the papers served.

"(5) *Failure to File.* Failure to file proof of service does not affect the validity of the service."

Proof of service of summons. MCR 2.104(A) contains the requirements for proof of service of a summons:

"(A) *Requirements.* Proof of service may be made by

(1) written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process;

(2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by

(a) a sheriff,

(b) a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing the process is held,

(c) an appointed court officer,

(d) an attorney for a party; or

(3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

"The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location."

Proof of service of other papers. MCR 2.107(D) contains the requirements for proof of service of papers other than a summons:

"(D) *Proof of Service.* Except as otherwise provided by MCR 2.104, 2.105, or 2.106, proof of service of papers

> required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under MCR 2.114(A), or other proof satisfactory to the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates."

Proof of service by publication. The requirements for proof of service by publication are contained in MCR 2.106(G)(1) and (3). MCR 2.106(G)(1) contains requirements for proof of service by publication, and MCR 2.106(G)(3) contains requirements for proof of service by publication accompanied by a mailing. Those rules state:

> "(G) *Proof of Service.* Service of process made pursuant to this rule may be proven as follows:
>
> > (1) Publication must be proven by an affidavit of the publisher or the publisher's agent
> >
> > (a) stating facts establishing the qualification of the newspaper in which the order was published,
> >
> > (b) setting out a copy of the published order, and
> >
> > (c) stating the dates on which it was published.
> >
> > * * *
>
> "(3) Mailing must be proven by affidavit. The affiant must attach a copy of the order as mailed, and a return receipt."

5.11 Judgments and Orders

MCR 3.925(C) sets forth the requirements for the form and service of judgments and orders. That rule states:

> "(C) *Judgments and Orders.* The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address."

5.12 Adjournments and Continuances in Child Protective Proceedings

MCR 3.923(G) contains restrictions on a court's ability to grant a request for adjournment or continuance in a child protective proceeding. That rule states:

> "(G) *Adjournments.* Adjournments of trials or hearings in child protective proceedings should be granted only
>
> (1) for good cause,
>
> (2) after taking into consideration the best interests of the child, and
>
> (3) for as short a period of time as necessary."

MCR 3.965(B)(1) and (B)(10), explained in Section 7.3, allow a court to adjourn a preliminary hearing in certain circumstances. MCR 3.972(A) allows the court to postpone trial:

> "(1) on stipulation of the parties;
>
> "(2) because process cannot be completed; or
>
> "(3) because the court finds that the testimony of a presently unavailable witness is needed."

MCL 712A.17(1) also contains language regarding adjournments and continuances. That provision states in relevant part:

> "The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:
>
> (a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.
>
> (b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child's best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific

> reasons why a longer adjournment or continuance is necessary."

This statute contains time requirements not contained in MCR 3.923(G). If a statute and court rule conflict, the court rule prevails if it governs "practice and procedure." Const 1963, art 6, §5, MCR 1.104, and *McDougall v Schanz,* 461 Mich 15, 25 (1999). Adjournments, continuances, and time requirements are procedural. See *Krajewski v Krajewski,* 125 Mich App 407, 414 (1983), rev'd on other grounds 420 Mich 729 (1984) (court rules properly govern "how" an action is brought, whereas statutes properly govern "what" action may be brought). But see also *McDougall, supra* at 30 (a statute impermissibly infringes the Michigan Supreme Court's rulemaking authority *only* when no policy consideration other than judicial efficiency can be identified).

5.13 Table of Time and Notice Requirements in Child Protective Proceedings

The following table contains time and notice requirements only. Selected requirements under the implementing regulations of the Adoption and Safe Families Act are noted by bold catchlines. For contents of notices, see the appropriate sections. For waiver of notice requirements, see Section 5.8, above. To compute time periods, see MCR 1.108. For court holidays, see MCR 8.110(D)(2).

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Reporting Suspected Abuse or Neglect	Oral report must be made immediately. Written report must be filed with the DHS within 72 hours of the oral report.	MCL 722.623(1)(a). **See Section 2.6**
Investigating Suspected Abuse or Neglect	Report must be referred to the appropriate agency and/or an investigation must be commenced within 24 hours.	MCL 722.628(1), (6), and (7). **See Section 2.7**
Mandatory Petitions in Cases of Severe Physical or Sexual Abuse	DHS must file petition within 24 hours after determining that child was severely physically injured or sexually abused.	MCL 722.637. **See Section 2.21**
Preliminary Inquiries	May be conducted at any time. There is no notice requirement.	MCR 3.962(A). **See Section 6.6**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Preliminary Hearings	**ASFA requirement.** Court must make a finding in the first court order that sanctions removal that remaining in the home would be contrary to the child's welfare.	45 CFR 1356.21(c), MCR 3.963(B)(2), and MCR 3.965(C)(2). **See Sections 3.2 and 8.1(B)**
	Hearing must commence within 24 hours after child is taken into protective custody, excluding Sundays and holidays, unless adjourned for good cause shown, or child must be released.	MCR 3.965(A)(1). **See Section 7.2**
	If a mandatory petition was filed alleging severe physical or sexual abuse, a hearing must be held within 24 hours of the filing, or on the next business day after the filing.	MCR 3.965(A)(2) and MCL 712A.13a(2). **See Section 7.2**
	Notice of hearing must be given to the parent in person, in writing, on the record, or by telephone as soon as the hearing is scheduled.	MCR 3.920(C)(2)(b). **See Section 5.4**
Removal Hearing for Indian Child	Following emergency removal, court must complete a removal hearing within 28 days of removal.	MCR 3.980(C)(1). **See Section 20.9**
	In other cases, a removal hearing must be conducted prior to removal.	MCR 3.980(C)(2). **See Section 20.9**
	A removal hearing may be combined with any other hearing.	MCR 3.980(C)(4). **See Section 20.9**
	If the removal hearing is not combined with a preliminary hearing, at least seven days' notice in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Identification of Appropriate Relative Placement	The supervising agency must identify, locate, and consult with the child's relatives within 30 days of the child's removal to determine appropriate placement. Within 90 days of removal, the supervising agency must make and document in writing its placement decision and provide written notice of the decision to the child's lawyer-guardian ad litem, guardian, guardian ad litem, mother, father, the attorneys for the mother and father, each relative who expresses an interest in caring for the child, the child if he or she is old enough to express an opinion regarding placement, and the prosecuting attorney.	MCL 722.954a(2). **See Section 8.2** MCL 722.954a(2)(a)–(b). **See Section 8.11(B)**
Determination of Reasonable Efforts to Prevent Child's Removal	**ASFA requirement.** Court must make determination no later than 60 days after the date of removal.	45 CFR 1356.21(b)(1)(*i*) and MCR 3.965(D)(1). **See Section 8.10**
Initial Service Plan, Criminal Record Check, Central Registry Clearance, and Home Study	The agency must complete an initial service plan within 30 days of placement. If the child is placed in a relative's home, the DHS must conduct a criminal record check and central registry clearance before or within seven days of placement, and the DHS must submit a home study to the court within 30 days of placement. The court may order DHS to report the results of a criminal record check and central registry clearance to the court before or within seven days after placement. The court must order DHS to submit a copy of the home study to the court within 30 days after placement.	MCR 3.965(E)(1) and MCL 712A.13a(8)(a). **See Section 8.6** MCL 712A.13a(9). **See Section 8.2** MCR 3.965(C)(4)(a). **See Section 8.2** MCR 3.965(C)(4)(b). **See Section 8.2**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Review of Placement Order and Initial Service Plan	Court must review custody order, placement order, or initial service plan when a motion is made or filed by a party.	MCL 712A.13a(12) and MCR 3.966(A). **See Section 8.11(A)**
	Personal service of a written motion must be made at least seven days before hearing, and of the response at least three days before hearing. If service is by mail, add two days to these deadlines. For good cause, court may set different periods for filing and serving motions.	MCR 3.922(C) and 2.119(C). **See Section 9.3**
	If a hearing is held, at least seven days' notice in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**
Review of Supervising Agency's Initial Placement Determination	Persons notified of the initial placement decision may request written documentation of the determination within five days of the notice.	MCR 3.966(B)(1)(d) and MCL 722.954a(3). **See Section 8.11(B)**
	A lawyer-guardian ad litem may petition the court for review within 14 days after the date of the written placement decision, and a review hearing on the record must commence within seven days after the petition is filed.	MCR 3.966(B)(2)–(3) and MCL 722.954a(3). **See Section 8.11(B)**
	At least seven days' notice in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Review of Change of Child's Foster Care Placement	Unless the foster parent requests or agrees to the change in placement or the court orders the child returned home, removal must occur less than 30 days after the child's initial removal from home, or less than 90 days if the new placement is with a relative. Supervising agency must maintain placement for at least three days or until the Foster Care Review Board makes its determination if foster parent appeals. Removal may occur at any time the supervising agency has reasonable cause to suspect sexual abuse, nonaccidental physical injury, or substantial risk of harm to the child's emotional well-being.	MCL 712A.13b(1)(b), (2), and (7). **See Sections 8.12–8.16**
	Supervising agency must notify SCAO and foster parents prior to removal. Supervising agency must only notify SCAO of emergency removal.	MCL 712A.13b(2)(a)–(c). **See Section 8.13**
	Foster parents may appeal to the FCRB within three days of notice of the intended move. Within seven days of receiving an appeal, the FCRB must investigate and, within three days after completing its investigation, report to the court or MCI superintendent, foster parents, parents, and supervising agency.	MCL 712A.13b(2)(b) and (3). **See Section 8.14**
	If necessary, the court must set a hearing no sooner than seven or later than 14 days after notice from the FCRB. Notice of hearing must be given to the foster parents, interested parties, and prosecuting attorney (if he or she has appeared).	MCR 3.966(C)(2)(a)–(b) and MCL 712A.13b(5). **See Section 8.15**
	MCI superintendent must make a decision regarding the child's placement within 14 days after notice from the FCRB.	MCL 712A.13b(5). **See Section 8.15**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Demand for Jury Trial	Written demand for jury trial shall be filed within 14 days after court gives notice of the right to jury trial or 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial. The court may excuse a late filing in the interest of justice.	MCR 3.911(B). **See Section 9.5**
Demand for Trial by Judge (Rather Than Referee)	Written demand for trial by judge rather than referee shall be filed within 14 days after court gives notice of the right to trial by a judge or 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial. The court may excuse a late filing in the interest of justice.	MCR 3.912(B). **See Section 9.5**
Motions to Suppress Evidence	Personal service of motion must be made at least seven days before hearing, and of the response at least three days before hearing. If service is by mail, add two days to these deadlines. For good cause, court may set different periods for filing and serving motions. If a hearing is held, at least seven days' notice in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.922(C) and 2.119(C). **See Section 9.3** MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Notice of Intent to Use Alternative Procedures to Obtain Testimony or to Admit Hearsay Statements under MCR 3.972(C)(2)	Within 21 days after notice of trial date, but no later than seven days before trial, proponent must file with the court and serve all parties written notice of intent to use alternative procedures or admit hearsay statements.	MCR 3.922(E)(1) **See Section 11.8(C)**
	Within seven days after receipt of notice, but no later than two days before trial, nonproponent parties must provide written notice to court of intent to offer rebuttal testimony or evidence in opposition to the proponent's request and identify any witnesses to be called.	MCR 3.922(E)(2) **See Section 11.8(C)**
	The court may shorten these time periods for good cause shown.	MCR 3.922(E)(3) **See Section 11.8(C)**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Trials	If the child is not in placement, trial must be held within six months after the filing of the petition unless adjourned for good cause. If the child is in placement, trial must commence as soon as possible but no later than 63 days after the child is placed by the court unless the trial is postponed on stipulation of the parties, because process cannot be completed, or because the court finds that the testimony of a witness presently unavailable is needed.	MCR 3.972(A). **See Section 12.2**
	At least seven days' notice in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**
	A summons must be served on a respondent. A summons may be served on a person with physical custody of the child directing such person to appear with the child. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing as provided in the paragraph above.	MCR 3.920(B)(2)(b) and (F). **See Sections 5.1 and 5.3**
	Personal service is required at least seven days before trial. If personal service is impracticable or cannot be achieved, the court may direct service in any manner reasonably calculated to give notice and an opportunity to be heard, including publication. If summons is served by registered mail, it must be sent at least 14 days before trial, or 21 days if the person is not a Michigan resident.	MCR 3.920(B)(4)(a)–(b) and 3.920(B)(5)(a)–(b). **See Section 5.3(B)–(C)**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Trials, continued	If service is by publication, notice must appear in a newspaper where the party resides, if known, or in the county where the action is pending, at least once 14 days before trial.	MCR 3.920(B)(4)(b) and 3.920(B)(5)(c). **See Section 5.3(B)–(C)**
Rehearings or Motions for New Trial	Written motion must be filed within 21 days after the date of the order resulting from the hearing or trial. Court may entertain untimely motion for good cause shown. Written response must be filed with the court and parties within seven days of motion. At least seven days' notice of the motion or hearing, if held, in writing or on record must be given to the respondent; respondent's attorney; child's lawyer-guardian ad litem; child's parents, guardian, or legal custodian, if any, other than respondent; the petitioner; a party's guardian ad litem; and any other person the court directs to be notified.	MCR 3.992(A) and (C). **See Sections 12.13(B)** MCR 3.920(C)(1) and 3.921(B)(1). **See Sections 5.4–5.5**
Case Service Plans	The DHS must prepare a Case Service Plan before the court enters an order of disposition. The plan must be made available to the parties and court. Foster parent must be given copies of all Initial Service Plans, updated service plans, revised service plans, court orders, and medical, educational, and mental health reports, including reports made prior to child's placement, within 10 days of a written request from the provider. The Case Service Plan must be updated every 90 days as long as the child remains in placement.	MCL 712A.18f(2). **See Section 13.7** MCL 712A.13a(13). **See Sections 8.3 and 13.11** MCL 712A.18f(5). **See Section 13.13**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Initial Dispositional Hearings* ***If termination is requested at the initial dispositional hearing, see notice requirements in "Hearings to Terminate Parental Rights," below.**	The interval between trial and disposition is discretionary with the court, but if the child is in placement, the interval may not be more than 35 days, except for good cause. Unless the dispositional hearing is held immediately after trial or plea, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920. If the child was diagnosed with failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture diagnosed as the result of abuse or neglect, or drug exposure, each of the child's physicians must be notified of the time and place of the hearing.	MCR 3.973(C). **See Section 13.3** MCR 3.973(B). **See Section 5.4** MCL 712A.18f(7). **See Section 5.6**
Review of Referee's Recommended Findings and Conclusions	Request for review must be filed within seven days after the inquiry or hearing or seven days after issuance of referees' recommendations, whichever is later, and served on interested parties, and a response may be filed within seven days after the filing of the request for review. Absent good cause for delay, the judge must consider the request within 21 days after it is filed if child is in placement.	MCR 3.991(B)(3), 3.991(B)(4), and 3.991(C). **See Section 15.7** MCR 3.991(D). **See Section 15.8**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Dispositional Review Hearings* ***See also provisions for reviews of children in permanent foster family or relative placements, below.**	The court must conduct review hearings not later than 182 days after the child's removal from home and not later than every 91 days after that for the first year the child is subject to the court's jurisdiction. After the first year the child has been removed from home, the court must conduct review hearings not later than 182 days from the immediately preceeding review hearing conducted during that first year and every 182 days thereafter until the case is dismissed. A review hearing must not be cancelled or delayed, regardless of whether a petition to terminate parental rights or another matter is pending.	MCL 712A.19(3). **See Section 16.1**
	ASFA requirement. Reviews of child's status must occur at least every six months.	45 CFR 1355.34(c)(2)(*ii*). **See Section 16.1**
	At the initial disposition hearing and every review hearing, the court must decide whether it will accelerate the date for the next scheduled review hearing.	MCR 3.975(D) and MCL 712A.19(3). **See Section 16.1**
	Seven days' written notice to the agency responsible for child's care and supervision; person or institution having court-ordered custody of child; parents and attorney for respondent-parent (if parental rights have not been terminated); a guardian or legal custodian of child; guardian ad litem; child's lawyer-guardian ad litem; a "nonparent adult" (if ordered to comply with Case Service Plan); elected leader of the Indian tribe (if tribal affiliation has been determined); attorneys for each party; prosecuting attorney (if she or he has appeared); the child (if 11 years of age or older); and other persons as the court may direct.	MCR 3.975(B), MCR 3.921(B)(2), and MCL 712A.19(5). **See Sections 5.4–5.5**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Dispositional Review Hearings, continued	If the child was diagnosed with failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture diagnosed as the result of abuse or neglect, or drug exposure, each of the child's physicians must be notified of the time and place of the hearing. If at least seven days' written notice is given to all parties (unless waived), and if no party requests a hearing within the seven days, the child may be returned home without a hearing.	MCL 712A.18f(7). **See Section 5.6** MCR 3.975(H) and MCL 712A.19(10). **See Section 16.1**
Review Hearings for Children Remaining in Home	The court must conduct a review hearing not later than 182 days from the date a petition is filed to give the court jurisdiction and no later than every 91 days thereafter for the first year the child is subject to the court's jurisdiction. After the first year the child is subject to the court's jurisdiction, the court must conduct a review hearing not later than 182 days from the immediately preceeding review hearing conducted during that first year and every 182 days thereafter until the case is dismissed. A review hearing must not be cancelled or delayed, regardless of whether a petition to terminate parental rights or another matter is pending.	MCL 712A.19(2). **See Section 16.7**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Emergency Removal Hearings	Court must conduct hearing no later than 24 hours after child is taken into custody, excluding Sundays and holidays.	MCR 3.974(B)(3). **See Section 16.9**
	Notice of the initial hearing must be given to the parent in person, in writing, on the record, or by telephone as soon as the hearing is scheduled.	MCR 3.974(B)(2) and 3.920(C)(2)(b). **See Section 5.4**
	If the child is in placement, a dispositional review hearing must be commenced no later than 14 days after placement, except for good cause shown.	MCR 3.974(C). **See Section 16.9**
	Seven days' written or record notice to the agency responsible for child's care and supervision; person or institution having court-ordered custody of child; parents and attorney for respondent-parent (if parental rights have not been terminated); a guardian or legal custodian of child; guardian ad litem; child's lawyer-guardian ad litem; a "nonparent adult" (if ordered to comply with Case Service Plan); elected leader of the Indian tribe (if tribal affiliation has been determined); attorneys for each party; prosecuting attorney (if she or he has appeared); the child (if 11 years of age or older); and other persons as the court may direct.	MCR 3.974(C), MCR 3.921(B)(2), and MCL 712A.19(5). **See Sections 5.5 and 16.9**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Permanency Planning Hearings	If a court determines that reasonable efforts to reunify the family are not required, the court must conduct a permanency planning hearing within 30 days after that determination.	MCL 712A.19a(2). **See Section 17.3**
	In other cases, court must conduct permanency planning hearings within 12 months after the child was removed from home and every 12 months thereafter during the continuation of foster care.	MCR 3.976(B)(3), MCL 712A.19a(1), and MCL 712A.19c(1). **See Section 17.3**
	A permanency planning hearing must not be cancelled or delayed, regardless of whether a petition for termination of parental rights or another matter is pending.	MCL 712A.19a(1) and MCL 712A.19c(1). **See Section 17.3**
	Supervising agency must strive to achieve a permanent placement within 12 months of removal.	MCL 722.954b(1). **See Section 17.2**
	ASFA requirements. A permanency hearing must be conducted within 12 months after the child enters foster care and every 12 months thereafter during the continuation of foster care. In cases involving "aggravated circumstances," a permanency hearing must be conducted within 30 days of a determination that reasonable efforts to reunify a family are not required. Agency must obtain a judicial determination that it has made reasonable efforts to finalize a permanency plan within 12 months of a child's entry into foster care and every 12 months thereafter during the continuation of foster care.	45 CFR 1355.34(c)(2)(*iii*), 45 CFR 1356.21(b)(2) and (h). **See Section 17.3**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Permanency Planning Hearings, continued	14 days' written notice to the agency responsible for child's care and supervision; person or institution having court-ordered custody of child; parents and attorney for respondent-parent (if parental rights have not been terminated); a guardian or legal custodian of child; guardian ad litem; child's lawyer-guardian ad litem; a "nonparent adult" (if ordered to comply with Case Service Plan); elected leader of the Indian tribe (if tribal affiliation has been determined); attorneys for each party; prosecuting attorney (if she or he has appeared); the child (if 11 years of age or older); and other persons as the court may direct.	MCR 3.976(C), 3.920(C)(3)(a), 3.921(B)(2), and MCL 712A.19a(4). **See Sections 5.4–5.5**
	If the child was diagnosed with failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture diagnosed as the result of abuse or neglect, or drug exposure, each of the child's physicians must be notified of the time and place of the hearing.	MCL 712A.18f(7). **See Sections 5.6**
	If child is not returned home following hearing, the agency must initiate termination proceedings within 42 days after the hearing, unless the court finds that initiating termination proceedings is clearly not in the child's best interests.	MCR 3.976(E)(2) and MCL 712A.19a(6). **See Section 17.5**
Dispositional Review Hearings When Child Is in Permanent Foster Family Agreement or Placement With Relative Is Intended to Be Permanent	The court must hold review hearings not more than 182 days after the child is removed from home and every 182 days thereafter as long as the child is subject to the jurisdiction of the court, MCI, or other agency. A review hearing must not be cancelled or delayed, regardless of whether a petition to terminate parental rights or another matter is pending.	MCR 3.975(C)(2) and MCL 712A.19(4). **See Section 16.1**
	Upon motion of a party or the court, the court may accelerate the date for the next scheduled review hearing.	MCR 3.975(D) and MCL 712A.19(4). **See Section 16.1**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Hearings to Terminate Parental Rights	**ASFA requirements.** Petition must be filed within 60 days after a court determines that a child has been subjected to "aggravated circumstances" or if a child has been in foster care 15 of the last 22 months unless the child is being cared for by a relative, a compelling reason exists that petitioning is not in the child's best interest, or the state has not provided the family services necessary for the child's safe return home.	45 CFR 1356.21(h) and (i). **See Section 17.6**
	Court must conduct termination hearing within 42 days of filing of supplemental petition, but court may extend time for 21 days for good cause shown.	MCR 3.977(F)(2) and MCR 3.977(G)(1)(b). **See Section 18.10–18.11**
	14 days' written notice to the agency responsible for child's care and supervision; person or institution having court-ordered custody of child; parents and attorney for respondent-parent (if parental rights have not been terminated); a guardian or legal custodian of child; guardian ad litem; child's lawyer-guardian ad litem; a "nonparent adult" (if ordered to comply with Case Service Plan); elected leader of the Indian tribe (if tribal affiliation has been determined); attorneys for each party; prosecuting attorney (if she or he has appeared); the child (if 11 years of age or older); and other persons as the court may direct.	MCR 3.977(C), 3.920(C)(3)(b), 3.921(B)(2)–(3), and MCL 712A.19b(2). **See Sections 5.4–5.5**
	A respondent must be personally served with a summons. A summons may be served on a person with physical custody of the child directing such person to appear with the child. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing as provided in the paragraph above.	MCL 712A.12, MCL 712A.13, MCR 3.920(B)(2)(b), and MCR 3.920(F). **See Sections 5.1 and 5.3**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Hearings to Terminate Parental Rights (continued)	Personal service is required at least 14 days before hearing. If personal service is impracticable or cannot be achieved, the court may direct service in any manner reasonably calculated to give notice and an opportunity to be heard, including publication. If summons is served by registered mail, it must be sent at least 14 days before trial, or 21 days if the person is not a Michigan resident.	MCR 3.920(B)(4)(a)–(b) and MCR 3.920(B)(5)(a)–(b). **See Section 5.3(B)–(C)**
	If service is by publication, notice must appear in a newspaper where the party resides, if known, or in the county where the action is pending, at least once 14 days before trial.	MCR 3.920(B)(4)(b) and MCR 3.920(B)(5)(c). **See Section 5.3(B)–(C)**
	If it does not issue a decision on the record, the court must issue opinion and order within 70 days of the commencement of the initial hearing on termination of parental rights petition. Failure to issue opinion within 70 days does not dismiss petition, however.	MCR 3.977(H)(1) and MCL 712A.19b(1). **See Section 18.12**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Post-Termination of Parental Rights Review Hearing	Unless the child is placed in a permanent foster family or a placement with a relative intended to be permanent, the court must conduct review hearings at least every 91 days following termination of parental rights for the first year following termination of parental rights. If a child remains in placement for more than one year following termination of parental rights, the court must conduct a review hearing not later than 182 days from the immediately preceeding review hearing during that first year and every 182 days thereafter until the case is dismissed. A review hearing must not be cancelled or delayed, regardless of whether a petition to terminate parental rights or another matter is pending.	MCL 712A.19c(1). **See Section 19.1**
	Foster parents and pre-adoptive parents or relatives providing care must be given notice of and an opportunity to be heard at each hearing.	MCR 3.978(B). **See Section 5.5**
	Supervising agency must submit information to place the child in the adoption directory if an adoptive family is not identified within 90 days of the entry of the order terminating parental rights.	MCL 722.954b(2) and MCL 722.958. **See Section 19.2**

Type of Proceeding	Time and Notice Requirements	Authorities and Cross-References
Appeals Following Termination of Parental Rights	Request for appellate counsel must be made within 14 days after notice of the order terminating parental rights is given or after a timely post-judgment motion is denied.	MCR 3.977(I)(1)(c). **See Section 18.13**
	In Court of Appeals, appeal of right must be filed within 14 days of entry of an order terminating parental rights under the Juvenile Code, 14 days after entry of an order denying a timely post-judgment motion, or 14 days after entry of an order appointing or denying appointment of appellate counsel.	MCR 3.993(A)(2) and MCR 7.204(A)(1). **See Section 21.4**
	Application for leave to appeal may not be granted if filed more than 63 days after entry of the order terminating parental rights or 63 days after entry of an order denying motion for rehearing.	MCR 3.993(C)(2) and MCR 7.205(F)(5). **See Section 21.4**
	In the Michigan Supreme Court, after a decision by the Court of Appeals, application for leave to appeal must be filed within 28 days after the clerk mails notice of an order entered by the Court of Appeals, the filing of the Court of Appeals opinion appealed from, or the mailing of an order denying a timely filed motion for rehearing.	MCR 7.302(C)(2). **See Section 21.4**